



INTRODUCTION TO IMMIGRATION COURT PROCEEDINGS

Christopher A. Santoro, Deputy Chief Immigration Judge



OUTLINE

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Sources of authority

What are you applying?

02

Due process and available relief

Not all immigration law violators will be before you. The process due and relief available depends on several factors.

03

Anatomy of a removal proceeding

What should a typical case look like?



OUTLINE

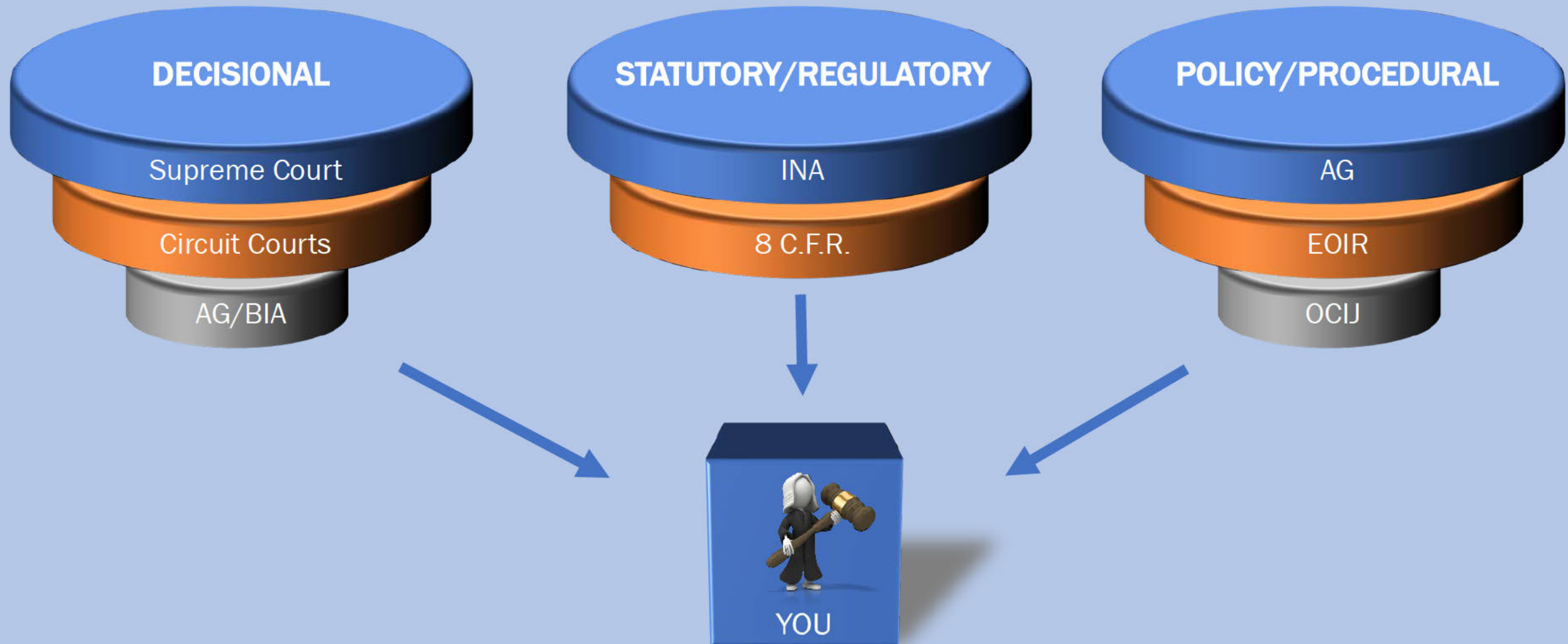
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Sources of authority

What are you applying?

SOURCES OF AUTHORITY

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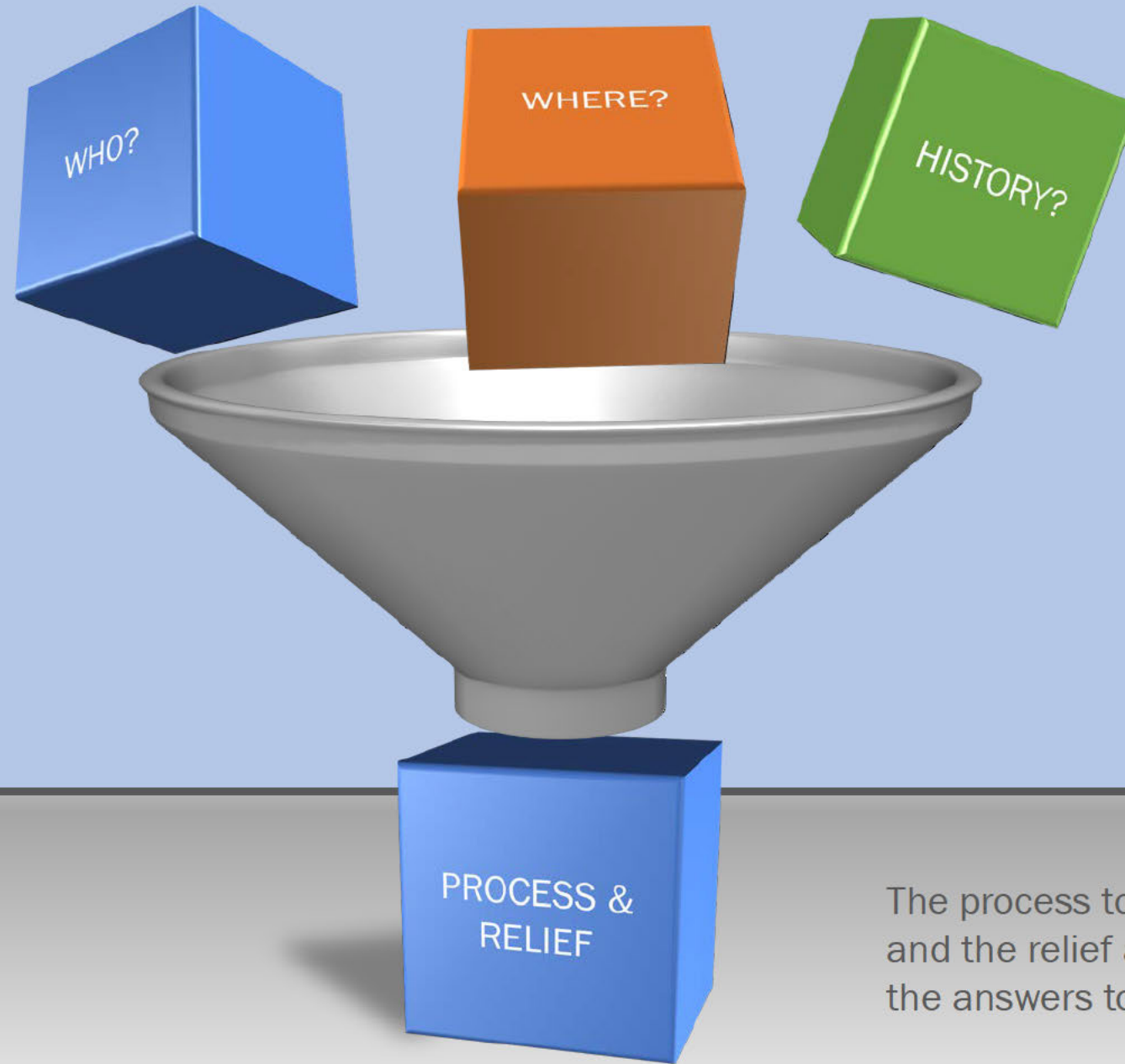
OUTLINE

02

Due process and available relief

Not all immigration law violators will be before you. The process due and relief available depends on several factors.

PROCESS DUE AND RELIEF AVAILABLE



02

1. Who did DHS encounter? What is their immigration status?
2. Where did DHS find them?
3. What is their history? Crimes? Length of time in U.S.? Other equities?

The process to which aliens are entitled and the relief available depends upon the answers to those questions.

DHS encounters: who?

02



U.S. citizen

United States citizenship can be obtained through:

- (1) birth
- (2) acquisition
- (3) naturalization
- (4) derivation



LPR/immigrant

Any non-U.S. citizen who is living in the U.S. under legally-recognized and lawfully-recorded permanent residence as an immigrant is known as a “permanent resident alien,” “lawful permanent resident,” or “Green Card holder.” The INA also defines an illegal alien who entered the United States without inspection as an immigrant but not a permanent resident alien.



Non-immigrant

An alien who seeks temporary entry to the U.S. for a specific purpose, usually must have a permanent residence abroad, and qualify for the nonimmigrant classification sought (e.g., foreign government officials, visitors for business and for pleasure, students, temporary workers, fiance(e)s of U.S. citizens).

DHS encounters: where?

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Port of entry

U.S. Customs and Border Protection has a complex mission at ports of entry with broad law enforcement authorities tied to screening all foreign visitors, returning American citizens, and imported cargo that enters the U.S. at more than 300 land, air and sea ports.



100 miles from border

INA §287(a)(3) provides for warrantless searches of automobiles and other conveyances "within a reasonable distance from any external boundary of the United States." 8 CFR § 287.1 generally defines "reasonable distance" as up to "100 air miles from any external boundary of the United States" as determined by DHS.



The interior

Everywhere else. Also can occur in DHS facilities when a previously-admitted alien seeks to change status or request relief (such as filing for asylum).

DHS encounters: history?

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prior removal order



convictions



method of entry



time in country

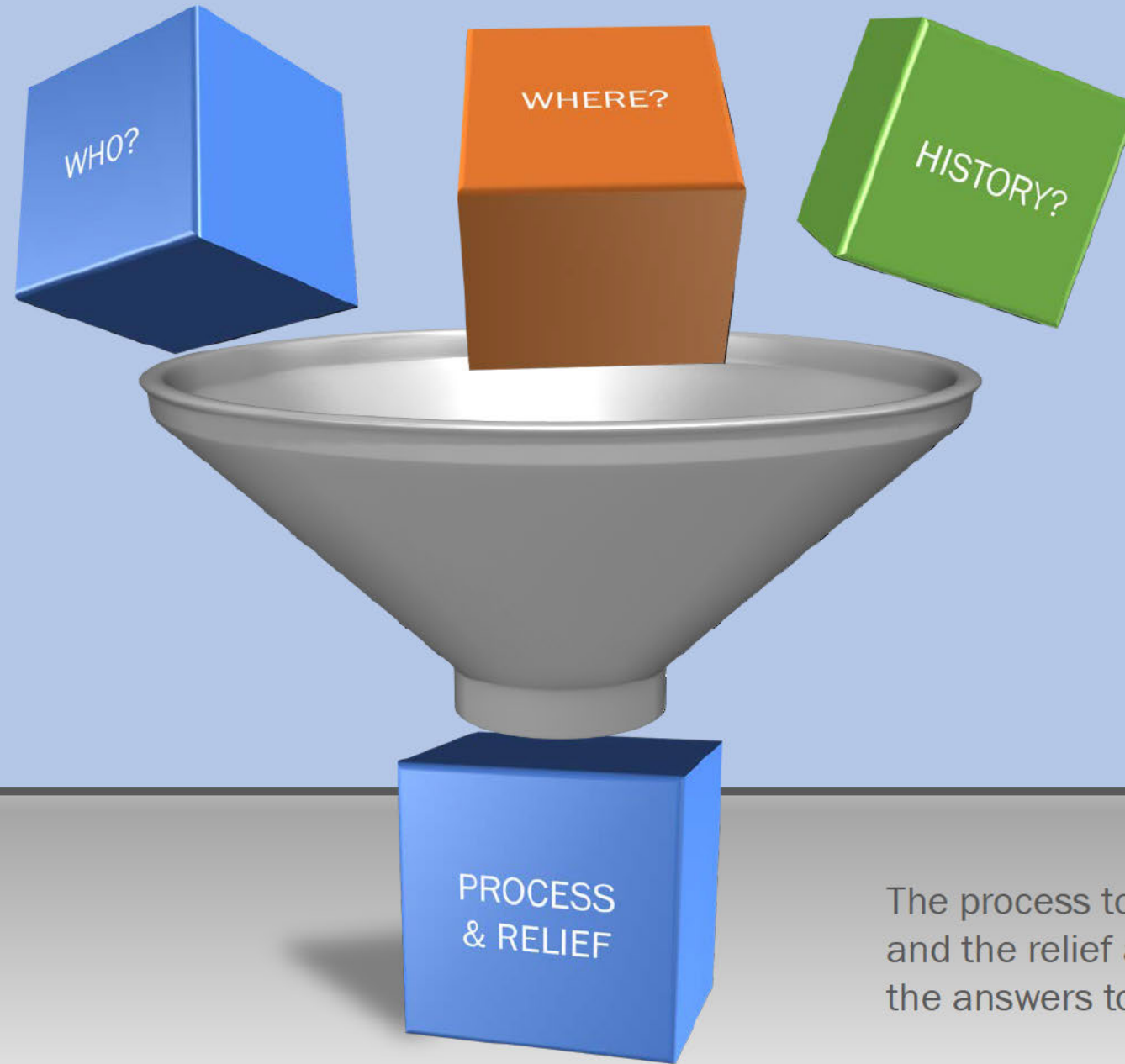


citizen family members



fear of return

PROCESS DUE AND RELIEF AVAILABLE



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The result: where the case might go

02

Immigration Court

240

Reinstatement of Prior Order

an alien previously ordered removed may have that order reinstated and executed (subject to a fear review)

241

Criminal Prosecution

district court prosecution may be followed by other actions under the INA

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USC
1325/
1326

235

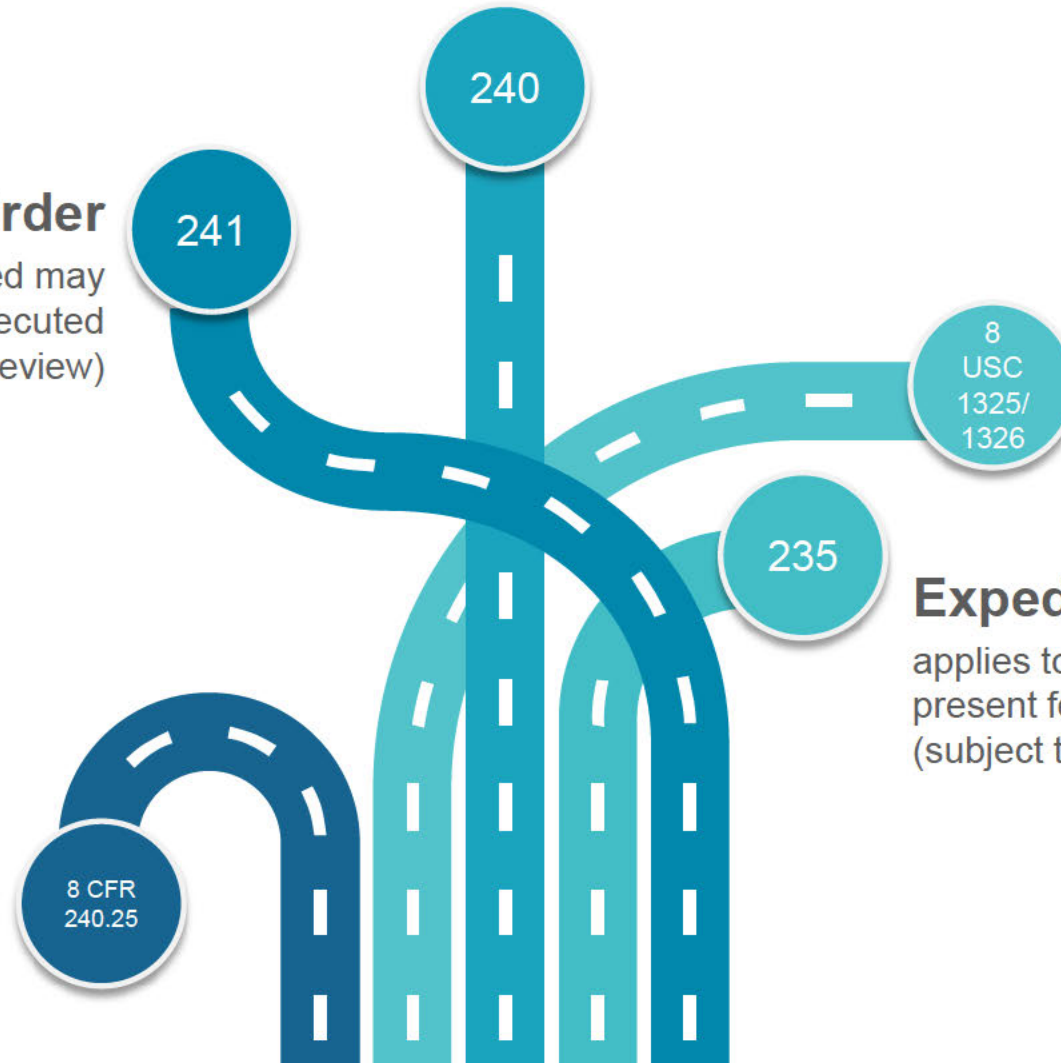
Expedited Removal

applies to arriving aliens, EWIs present for less than two years (subject to a fear review)

Voluntary Departure (by DHS)

immigration officers may allow aliens apprehended at the border to depart voluntarily in lieu of removal proceedings

8 CFR
240.25



The result: hearings in immigration court

02

“trial-level” hearings

Removal (formerly Deportation/Exclusion)

DHS alleges respondent is inadmissible (§212) or deportable (§237) – in proceedings initiated with an NTA (on or after 4/1/97) or an OSC (prior to 4/1/97)

Custody (Bond)

alien requests review of bond set (or not set) by DHS

Asylum-Only

aliens entitled only to a grant of asylum (e.g., crewmen, VWP entrants, stowaways, etc.)

less-common proceedings

- claimed status review
- rescission
- NACARA-only
- continued detention review

“appellate” hearings

Credible Fear Review

judicial review of DHS credible fear determination in expedited removal cases (no prior removal order)

Reasonable Fear Review

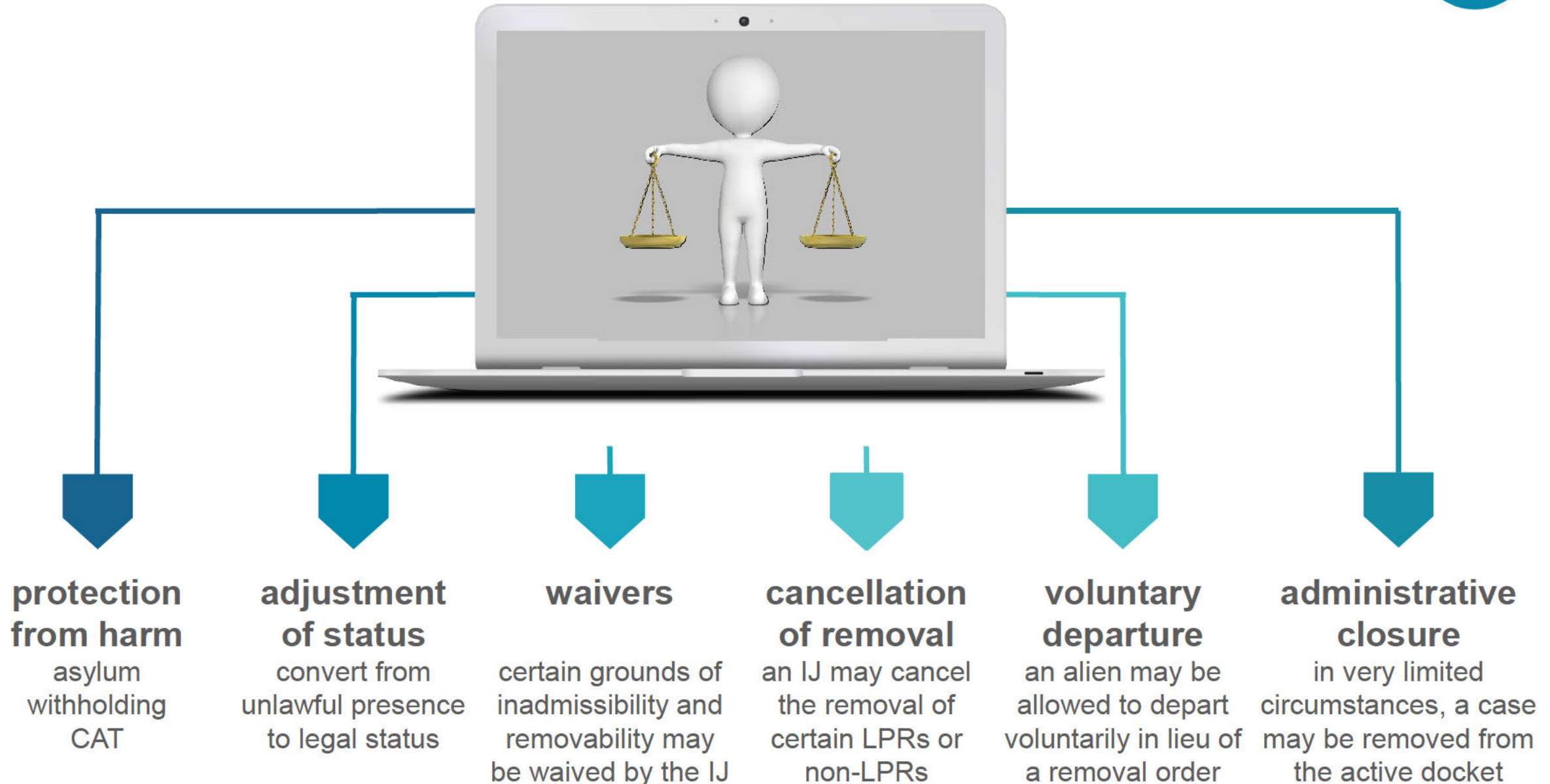
judicial review of DHS reasonable fear determination prior to reinstatement (prior removal order)

Withholding-Only

aliens entitled only to a grant of withholding of removal (prior removal order)

The result: potential relief in court

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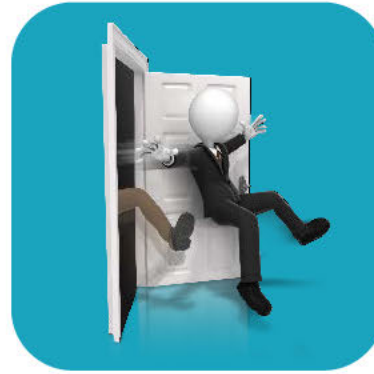
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Anatomy of a removal proceeding

What should a typical case look like?

Anatomy of a removal proceeding

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Begin Proceedings

DHS must serve the charging document on the alien and file it with the immigration court

Determine Removability

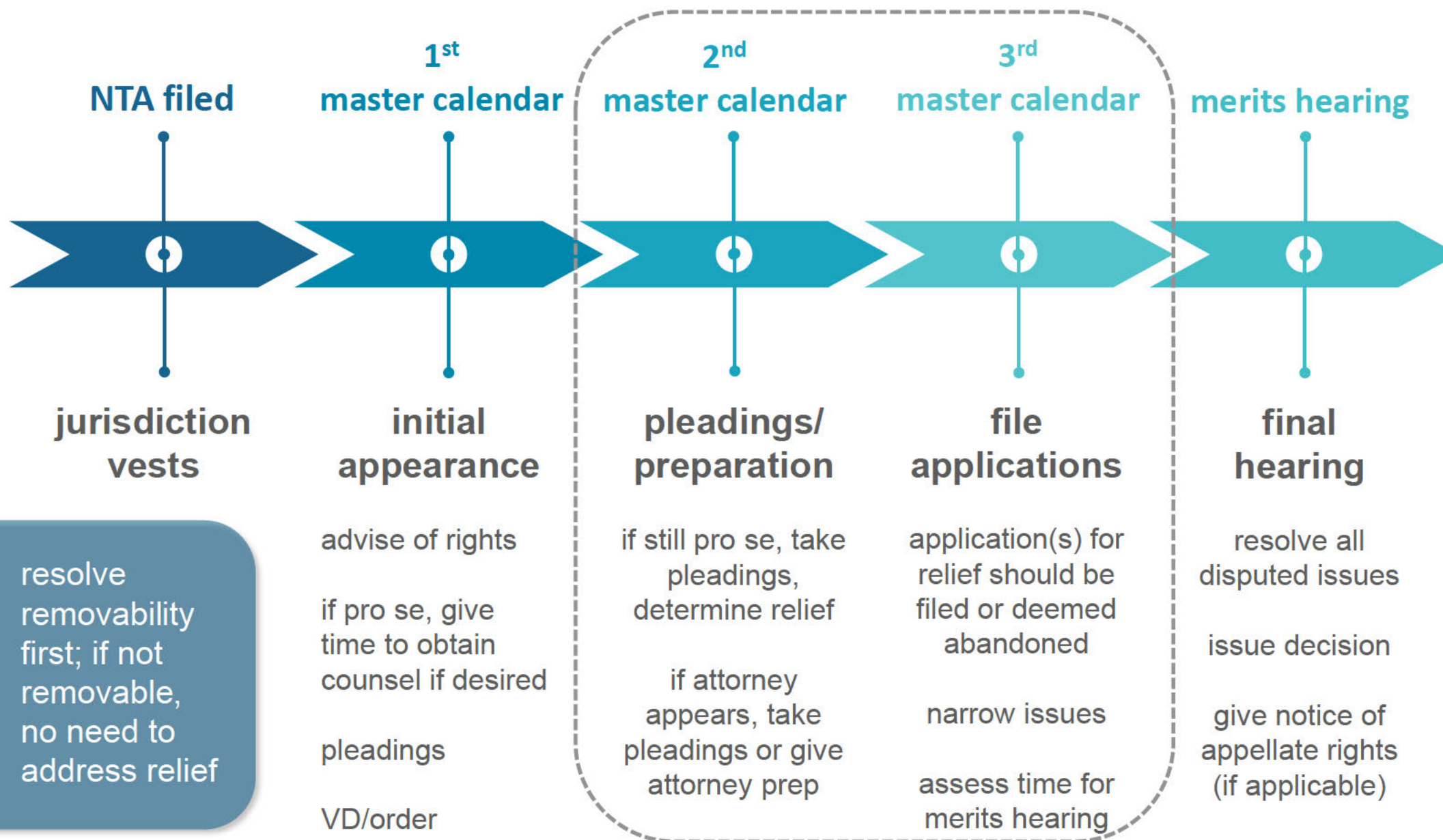
the IJ must determine whether the alien is removable; if not, proceedings terminate

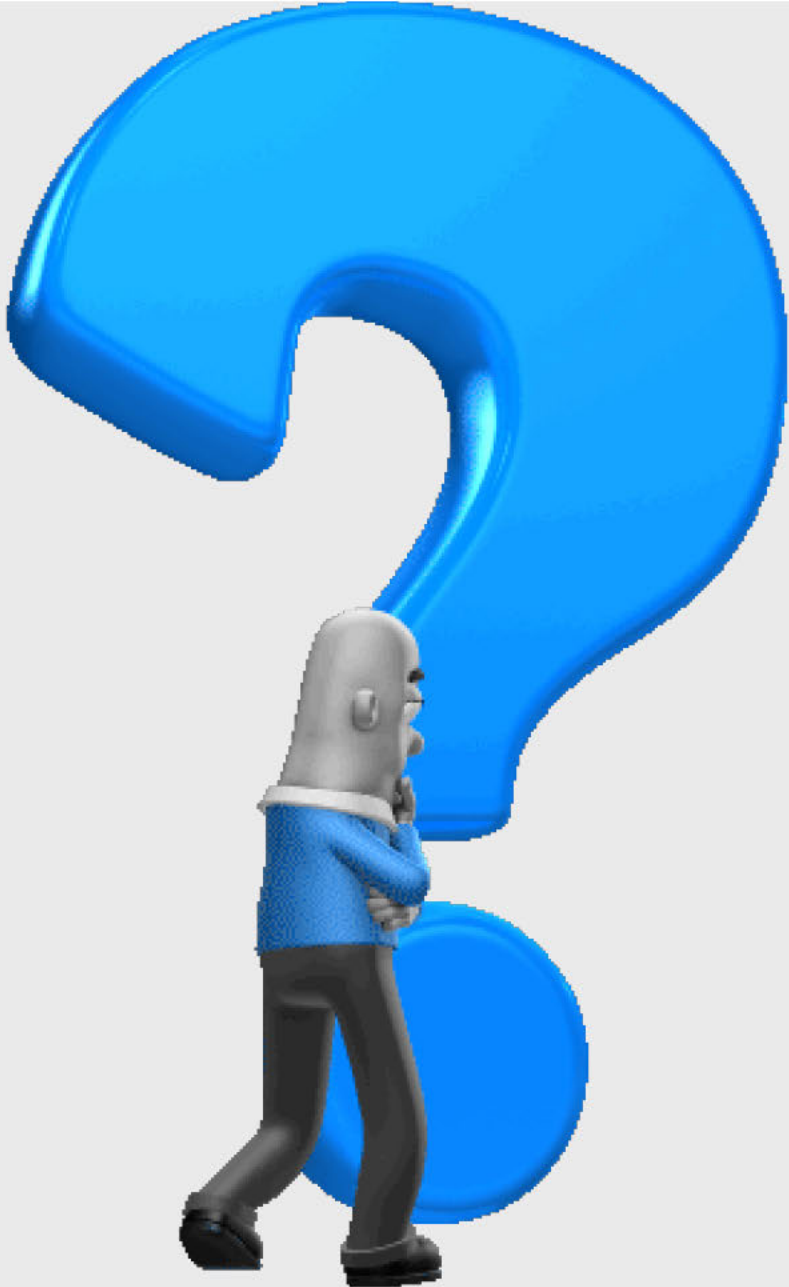
Determine Relief

if the alien seeks relief, the IJ must determine whether the alien is eligible for (and in most cases whether the alien merits the) relief

Anatomy of a removal proceeding

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